



MEMORANDUM

TO: ALL PENSION CLIENTS

FROM: KLAUSNER, KAUFMAN, JENSEN & LEVINSON

RE: Florida Constitution Revision Commission - Amendment 6

DATE: September 17, 2018 (updated memo)

The purpose of this memo is to alert clients about the potential impact of Amendment 6, which has been placed on the November 6, 2018 general election ballot in Florida. Amendment 6 contains several unrelated proposals which have been bundled together. Because of the deceptively short title of Amendment 6, and the large number of items on the lengthy ballot, many voters may not understand that the proposal may have an adverse impact on administrative agencies, including pension boards. For this reason, we encourage clients to carefully study Amendment 6, which is summarized below.

Every twenty years the Florida Constitution Revision Commission (CRC) meets to examine and recommend updates to the Florida Constitution. After holding fifteen public hearings across the state over the past two years, the CRC has recommended eight amendments to the Florida Constitution. Each amendment would need to separately obtain 60% voter approval to be adopted.

After studying the eight proposals, our office is advising pension clients of the potential adverse impact of Amendment 6. Our office has no opinion on the other seven proposed amendments.

Amendment 6 would add a new Section 21 into Article V of the Florida Constitution as follows:

SECTION 21. Judicial interpretation of statutes and rules.

In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo.

Discussion of the potential negative impact of Amendment 6:

Since 1952, the Florida Supreme Court has recognized the doctrine of judicial deference. In general, courts will defer to administrative agencies, including pension boards, due to their expertise and familiarity dealing with a particular statute, rule or ordinance. The doctrine is generally beneficial for pension boards.

As described by the CRC, Amendment 6, “requires judges and hearing officers to independently interpret statutes and rules rather than deferring to government agency’s interpretation.” Our office is concerned that the loss of judicial deference may harm municipal pension boards.

Admittedly, Amendment 6 only directly addresses judicial deference to judicial interpretations of *state* statutes. Nonetheless, several municipal plans were created by special act of the Florida Legislature. Importantly, all local public safety plans operate under Chapter 175 and 185, which are state statutes. Moreover, Amendment 6 potentially creates a precedent which will weaken judicial deference to municipal and special district boards.

The counter argument, of course, is that the weakening of the doctrine of judicial deference will strengthen the judiciary. To the extent that clients want a more powerful judicial branch, this would be an advantage.

Rather than presenting Amendment 6 as a stand-alone amendment, the proposal is combined with other amendments having nothing to do with judicial deference. For example, Amendment 6 also contains detailed provisions expanding victim’s rights in the criminal justice system, which are beyond the scope of this memo. Nevertheless, the CRC is presenting Amendment 6 under the seemingly innocuous title, “Rights of Crime Victims; Judges.”

A lower court judge in Leon County had held that Amendment 6 was misleading and improperly bundled unrelated proposals (a practice known as “logrolling”). In a 4-3 decision, the Florida Supreme Court reversed, placing Amendment 6 back on the November 6 ballot.

Our office is happy to answer any questions about Amendment 6. We encourage clients to carefully study Amendment 6 and look beyond the brief, five word title.